Co. v. *Cornell*, 10 N. Y. Misc. 553. See *Mearshon* v. *Lumber Co.*, 187 Pa. St. 12. *Contra*, *Western Paper Bag Co.* v. *Johnson*, 38 S. W. 364 (Tex. Civ. App.). The attempted distinction in the principal case that the requirement was merely a condition precedent to maintaining an action in the state courts, and not a regulation of interstate commerce, seems unsound. *Bateman* v. *Western Star Milling Co.*, 1 Tex. Civ. App. 90; *Murphy Varnish Co.* v. *Cornell*, *supra*. For to prevent an action for the purchase price in a sale of this character, merely because the foreign corporation has not fulfilled the statutory requirement, is surely a potent hindrance on interstate commerce.

JUDGMENT — COLLATERAL ATTACK — ATTACK BY SUIT TO QUIET TITLE. — By a divorce decree, title to land was declared to be in the husband. The wife brought suit to have title to the land quieted in her as against the husband and a *bona fide* purchaser from him, alleging that the decree was based on a stipulation obtained by fraud and duress, and was subsequently altered. *Held*, that the suit is a direct attack on the decree. *Kwentsky* v. *Sirovy*, 121 N. W. 27 (Ia.).

An attack on a judgment is collateral, in contradistinction to direct, unless the proceeding is expressly adapted and instituted to annul or modify the decree *Morrill* v. *Morrill*, 20 Or. 96. If the proceeding has an independent purpose the attack is collateral, although the modification of the judgment is a prerequisite to the end sought. *Lovitt* v. *Russell*, 138 Mo. 474. *Cf. Homer* v. *Fish*, 1 Pick. (Mass.) 435. Maintaining that under liberal code procedure, the courts should give the parties every relief to which the stated facts entitle them, regardless of the form in which the facts may be presented, some jurisdictions have held that a suit brought expressly to set aside a decree fraudulently obtained is not a collateral attack thereon, even though asking for further relief in the matter of title. *Noble* v. *Aune*, 50 Wash. 73. And in a proceeding to revive a judgment, the defendant's answer attacking it has been held to be direct. *Waterman* v. *Bash*, 46 Wash. 212. *Contra*, *Friedman* v. *Shamblin*, 117 Ala. 454. The principal case is not an extreme application of a doctrine which considers as direct any attack raised by the pleadings, thus accomplishing liberality in procedure at the expense of stability of judgments.

LANDLORD AND TENANT — CONDITIONS AND COVENANTS IN LEASES — ACTION BY LANDLORD DURING TERM. — After breach of the tenant's covenant to repair the landlord made the repairs, and during the term sued for the cost thereof. *Held*, that since the landlord has failed to show damage to the reversion, he cannot recover. *Wechsler* v. *Gude Co.*, 117 N. Y. Supp. 1037 (Sup. Ct.).

In England in such cases, the measure of damages is usually the diminution in the value of the reversion. *Doe* v. *Rowlands*, 9 C. & P. 734. But where this test is not practicable, the landlord has been awarded the cost of repairing. *Davies* v. *Underwood*, 2 H. & N. 570. In this country, this latter criterion has always been applied. *Schiefelin* v. *Carpenter*, 15 Wend. (N. Y.) 400; *Buck* v. *Pike*, 27 Vt. 529. In the principal case the court gives no reason for departing from the authorities, basing its decision entirely on a *dictum* in a recent case. See *Appleton* v. *Marx*, 191 N. Y. 81. The theory adopted is that the only damages recoverable during the term are for injuries to the reversion; while in an action brought after expiration of the lease, the measure of damages is the cost of repairing. This doctrine places the landlord in a dilemma when the tenant breaks his covenant to repair. Either he must permit the premises to deteriorate in order to show damage to the reversion; or if he repairs, he must wait for reimbursement till the lease expires. The decision seems indefensible, both on principle and on authority.

LEGACIES AND DEVISES — PARTICULAR INSTANCES OF CONSTRUCTION — IMPOSSIBILITY OF PERFORMANCE OF CONDITION SUBSEQUENT. — A testatrix bequeathed money to a church, to be used in building a Sunday school on a stipulated site. In condemnation proceedings by the county to get the proposed site,

the legatee claimed as compensation, the amount of the legacy in addition to the market value of the land on the ground that failure to use the named site would forfeit the legacy. *Held*, that the legacy would not be forfeited. *New Haven County* v. *Parish of Trinity Church*, 73 Atl. 789 (Conn.).

The effect of non-performance of a condition subsequent is ordinarily to divest the legacy. *Wheeler* v. *Lester*, 1 Bradf. (N. Y.) 213. However, there will be no forfeiture when performance by the legatee is, or later becomes impossible; as, for example, where he is prevented from performing by act of God. *Parker* v. *Parker*, 123 Mass. 584. The same is true when performance is impossible because illegal. *Cheairs* v. *Smith*, 37 Miss. 646. Impossibility because of foreign law is also an excuse. *Young* v. *Vass' Ex'r*, 1 Patt. & H. (Va.) 167. In all these cases, the law seeks to give effect to the testator's intentions; so if his primary object can still be accomplished, the legacy should not be divested, merely because it cannot be applied exactly as prescribed. *Young* v. *Vass' Ex'r.*, *supra*. But if the illegal condition is the sole motive of the bequest, the legatee being merely a trustee not intended to take a beneficial interest, the gift will be forfeited. *Lusk* v. *Lewis*, 32 Miss. 297. Since the location of the Sunday school on the particular site was not the primary motive of the testatrix, the principal case seems rightly decided.

LIFE ESTATE — PERSONALTY TO FOLLOW LIMITATIONS OF REALTY. — Certain chattels were given to be "used, held and enjoyed" by the person for the time being entitled to a certain mansion-house; but title to them was not to vest in a tenant-in-tail until majority, although such tenant was to have the "use and benefit" of them until that time. A tenant-in-tail attained majority, but died before coming into possession of the realty. *Held*, that since there is a plain intention on the part of the settlor, that the chattels should vest in a tenant-in-tail in possession, the personal representative of the deceased is not entitled to them. *In re Lord Chesham's Settlement*, 25 T. L. R. 657 (Eng., Ct. App., June 15, 1909).

This decision reverses that of the Chancery Division discussed in 22 HARV. L. REV. 441.

MORTGAGES — PRIORITIES — MORTGAGE FOR FUTURE ADVANCES. — A executed a mortgage to B in the form of a bill of sale of a certain dredge, to secure the repayment of money already advanced and such advances as might thereafter be made. This mortgage was duly recorded. A later gave a second mortgage to C, which was likewise recorded. In ignorance of the mortgage to C, B made further advances to A. C knew the amount of the original advance by B, and probably knew the state of the accounts between A and B when he took his second mortgage. *Held*, that B's lien is prior to that of C both as to the original and as to the subsequent advances. *The Seattle*, 170 Fed. 284 (C. C. A., Ninth Circ.).

A mortgage to secure present and future advances gives a prior lien for advances made in ignorance of, but subsequent to, an intervening incumbrance. *Ackerman* v. *Hunsicker*, 85 N. Y. 43. The mortgagee is in the position of a trustee or other obligor who has dealt with his obligee in ignorance of an assignment or incumbrance of the latter's interest. *Cf. Newman* v. *Newman*, 28 Ch. D. 674. By the great weight of authority, the recording of the second mortgage is not a notice to the first mortgagee, unless he takes a new conveyance. This is true even where the statute makes the record notice "to all persons"; for this is taken to mean only those acquiring a new interest, whereas the mortgagee relies on what he already has. *Birnie* v. *Main*, 29 Ark. 591. *Contra, Ladue* v. *Detroit & Milwaukee R. R.*, 13 Mich. 380. The court questions *obiter* whether a mere statement that the mortgage is "for advances to be made" is not too vague. A second mortgagee, however, who advanced his money without inquiry as to their amount could hardly be a *bona fide* purchaser; and he could protect himself as to subsequent advances by giving notice of his incumbrance to the first mortgagee. *Witczinski* v. *Everman*, 51 Miss. 841. *Contra, Balch* v. *Chaffee*, 73 Conn. 318.